(1) (3) Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

CR. M. P. NO. 36 OF 2007

PETITIONERS : 691/07

1. Prakash Hunge Son of Shri Sadashiv Rao Hunge, aged about 40 years, Occupation Service;

2. Smt. Vimal Hunge Wife of Late Shri Sadashiv Rao Hunge, aged about 65 years;

Both residents of Mayapur, Tahsil Ambikapur, District Surguja (C.G.).

Filed on 05-02-07
by Shri O. P. Yadav Advocate
R. to D. R. (J)

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VERSUS

RESPONDENT : State of Chhattisgarh, Through: The Police Station Ambikapur, District Surguja (C.G.).

PETITION UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973

XI-HC-78

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.M.P.No. 36/2007 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.02.2007

Shri Ashok Kumar Shukla, counsel for the petitioners.

Shri U.K.S. Chandel, Panel Lawyer for the State.

Heard.

This petition has been filed under Section 482 of the Code of Criminal Procedure against the order dated 24.01.2007 passed by the Sessions Judge, Ambikapur, District- Surguja (CG) in Criminal Revision No. 258/2006. The aforesaid revision was filed against the order dated 23.11.2006 passed by the Judicial Magistrate First Class, Ambikapur, District- Surguja (CG) in Criminal Case No. 487/2005.

It is stated by learned counsel for the petitioners that the matter is fixed for defense witness.

A perusal of the impugned order would show that after examination of the prosecutrix in the trial Court on 19.06.2006, an application was filed on 26.09.2006 for permitting to confront her with her previous statement and materials which were available in other cases between the parties i.e. a case under Section 125 Cr.P.C. and another case filed under Section 13 of the Hindu Marriage Act by the petitioners against the prosecutrix. Certainly, there is no bar in making confrontation from the previous statement of a witness under Section 145 of the Evidence Act, but the stage for making such prayer or for undertaking such an exercise would either be on the date of examination of that witness or prior to the date of examination of such witness. After

(39)

XI-HC-78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

completion of the examination of the witness on a particular day i.e. 19.6.2006, the subsequent application for confrontation was filed under Section 233 read with Section 243 of Cr.P.C. on 26.9.2006 which cannot be allowed because if such a prayer is allowed, that witness has to be re-called by the Court exercising jurisdiction under Section 311 of Cr.P.C. which jurisdiction is not available to the Court for facilitating the defence for making confrontation because that shall amount to filling the lacunas of their case. There appears to be no illegality or infirmity in the order passed by the two Courts below.

The petition has no merits and the same is dismissed at the motion stage.

However, it is observed that if the matter is still in the defence stage, the petitioners would be at liberty to file all those documents in their defence and to take appropriate steps in accordance with law.

Sd/-
SUNIL KUMAR SINHA
Judge

Vathi

21.2.07

P.T.O.